

Post 1-22-77 **Obeying the Wiretap Law**

THE WIRETAP law of 1968 was created to protect individual privacy both by limiting the number of wiretaps and by letting people know after removal of the taps that their privacy has been invaded. So it is a matter of some concern when the Supreme Court decides—as it did the other day—that the basic mechanism built into this law to force the government to comply with its provisions doesn't apply to some of them.

Under that law, as the Court interpreted it last week, investigators must give to the judge from whom they seek permission to tap the names of all persons they expect to overhear who are believed to be engaged in criminal activity. Subsequently, they must tell the judge whose conversations were actually intercepted. He then decides which ones are entitled to be notified. But, the Court ruled, nothing happens if the investigators fail to do either of these things.

You might think, from reading the law, that the government would be barred from using overheard conversations as evidence against people whose names it neglected to give to the judge. That is the action the act applies to evidence seized through illegal wiretaps. But the Court held that such an omission does not make the tap illegal and thus does not bring that sanction into operation. Justice Lewis F. Powell did add in a footnote that there might be a different result if it could be shown that the govern-

ment *deliberately* violated them.

This is, of course, an old problem. The Court created the suppression-of-evidence doctrine decades ago as a method of forcing police to comply with the Fourth Amendment's bar against unreasonable searches. The doctrine has been under increasingly heavy fire in recent years because it lets some criminals escape their due deserts when the evidence against them is suppressed because some policemen bungled. And it is clear that a majority of the current Court is far more likely to restrict, if not destroy, this doctrine than to permit its expansion.

Yet the Court has now created this difficulty: Without the suppression sanction there is little incentive for investigators to obey the letter of the law. It is nice for the Justices to lecture, as they did, that the government ought to adhere strictly to the law's provisions. But surely there has been sufficient evidence in the recent past to demonstrate that some investigators will play loose with the law if they think they can get away with it, especially when the law is as intricate and cumbersome as this one. Congress, of course, could provide that incentive either by overruling this particular decision or by creating a system of fines or administrative penalties for investigators who don't obey the law fully. Until it does, it seems to us that several of those fine-sounding procedures written into the wiretap law to protect the right of privacy do not, in fact, provide that protection.